

REMARKS

Claims 37-53 are pending in the application. Claims 37-53 should not be rejected under 35 USC § 103(a) as being unpatentable over US patent 5,884,032 to Bateman et al. (hereinafter Bateman) in view of US patent 4,052,570 to Sutton (hereinafter Sutton) in further view of US patent application 2001/0040887 to Shtivelman et al. (hereinafter Shtivelman) in further view of US patent 5,835,568 to Bass et al. (hereinafter Bass).

The prior rejection does not provide any suggestions or teaching to handle busy signals of calls by various customer in different manners as taught by Applicant's claimed invention. The examination is completely relying on Applicant's disclosure as a blueprint for combining the references using impermissible hindsight in an attempt to avoid allowing a novel and non-obvious claim to issue.

The Examination states that a business that encounters a busy signal when calling a customer would keep redialing that customer in order to get that customer's business, and that it would not be good business-sense to merely give up after unsuccessfully attempting to reach a customer only one time. See the last paragraph of page 4 of the Office Action mailed 4/28/06. Therefore, according to the Examination a regular telephone call

presenting a busy signal and said telephone call disclosed in Applicant's claim presenting a busy signal should both be handled by automatically redialing. The Examination does not provide any teaching or suggestion as to why a business would not keep redialing all calls of customer's telephones that present a busy signal in order to get that customer's business.

Applicant's invention recognizes that an immediate and continuous redialing would require providing continuous use of an outbound telephone line. Applicant's invention provides the call center with the ability to reduce the wasted outbound telephone lines used by a predictive dialer due immediately and continuously calling of every busy signal that is detected. None of the references cited by the Examination confront the problem. Applicant's invention also recognizes that identifying and prioritizing a busy signal detected by a customer online may provide more efficient use of call center resources. Applicant's claimed invention is not merely waiting for a circumstance or event that must be performed manually as the Examination suggests.

See middle of page 6 of the Office Action mailed 4/28/06.

None of the references teach or suggest how to balance the use of continuous redialing with the management of outbound

telephone resources. The CCPA expressly held that there must be some logical reason apparent from the evidence of record that would justify a combination or modification of references. In re *Regel*, 188USPQ 132 (CCPA 1975). In determining whether one of ordinary skill in the art would find it obvious to modify or combine references, the teachings of the reference, taken with the knowledge that a worker in the art already possesses, constitute the scope and content of the prior art that is referred to in the *Graham* decision. Thus, the question raised under § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art. Accordingly, even if all elements of a claim are disclosed in various prior art references, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill would have been prompted to combine the teachings of the references to arrive at the claimed invention. In re *Regel*, *supra*. Where no reasonable intrinsic or extrinsic justification exists for the proposed combination or modification, *prima facie* obviousness will not have been established, and no such justifications exist between the references, thus, no *prima face* case of obviousness has been established. The Examination simply fabricates out of whole cloth



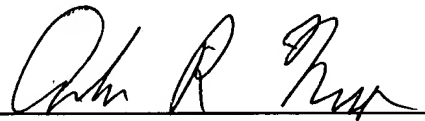
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the idea of how to handle busy signals of calls by various customer in different manners as taught by Applicant's claimed invention, even though none of the references suggests nor identifies such a problem. This is classic hindsight reasoning of exactly the type warned against by the courts.

In view of the foregoing, Applicant believes that all of the pending claims are in condition for allowance and requests early and favorable action on the merits. The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

Respectfully submitted,

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